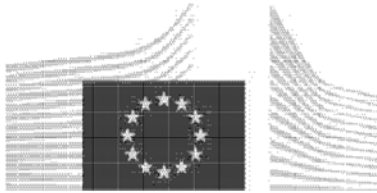


# **EXHIBIT H**



EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 21 December 2012

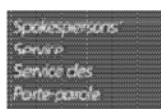
## **Antitrust: Commission sends Statement of Objections to Samsung on potential misuse of mobile phone standard-essential patents**

The European Commission has informed Samsung of its preliminary view that Samsung's seeking of injunctions against Apple in various Member States on the basis of its mobile phone standard-essential patents ("SEPs") amounts to an abuse of a dominant position prohibited by EU antitrust rules. While recourse to injunctions is a possible remedy for patent infringements, such conduct may be abusive where SEPs are concerned and the potential licensee is willing to negotiate a licence on Fair, Reasonable and Non-Discriminatory (so-called "FRAND") terms. The sending of a Statement of Objections does not prejudice the final outcome of the investigation.

Commission Vice President in charge of competition policy Joaquín Almunia said: *"Intellectual property rights are an important cornerstone of the single market. However, such rights should not be misused when they are essential to implement industry standards, which bring huge benefits to businesses and consumers alike. When companies have contributed their patents to an industry standard and have made a commitment to license the patents in return for fair remuneration, then the use of injunctions against willing licensees can be anti-competitive."*

Standards bodies generally require members to commit to license patents that they have declared essential for a standard on FRAND terms. This commitment is designed to ensure effective access to a standard for all market players and to prevent "hold-up" by a single SEP holder, since access to those patents which are standard-essential is a precondition for any company to sell interoperable products in the market. At the same time, it allows SEP holders to be fairly remunerated for their intellectual property.

The Samsung SEPs in question relate to the European Telecommunications Standardisation Institute's (ETSI) 3G UMTS standard, a key industry standard for mobile and wireless communications. When this standard was adopted in Europe, Samsung gave a commitment that it would license the patents which it had declared essential to the standard on FRAND terms. In 2011, Samsung started to seek injunctive relief before courts in various Member States against Apple based on claimed infringements of certain of its 3G UMTS SEPs.



IP/12/1448

Today's Statement of Objections sets out the Commission's preliminary view that under the specific circumstances of this case, where a commitment to license SEPs on FRAND terms has been given by Samsung, and where a potential licensee, in this case Apple, has shown itself to be willing to negotiate a FRAND licence for the SEPs, then recourse to injunctions harms competition. Since injunctions generally involve a prohibition of the product infringing the patent being sold, such recourse risks excluding products from the market without justification and may distort licensing negotiations unduly in the SEP-holder's favour. The preliminary view expressed in today's Statement of Objections does not question the availability of injunctive relief for SEP holders outside the specific circumstances present in this case, for example in the case of unwilling licensees.

## Background

The Commission opened the investigation in January 2012 (see [IP/12/89](#)).

Article 102 TFEU prohibits the abuse of a dominant position which may affect trade and prevent or restrict competition. The implementation of this provision is defined in the Antitrust Regulation (Council Regulation No 1/2003) which can be applied by the Commission and by the national competition authorities of EU Member States.

A Statement of Objections is a formal step in Commission investigations. The Commission informs the parties concerned in writing of the objections raised against them and the parties can reply in writing and request an oral hearing to present comments.

The Commission takes a final decision only after the parties have exercised their rights of defence.

If, after the parties have exercised their right of defence, the Commission concludes that there is sufficient evidence of an infringement, it can issue a decision prohibiting the conduct and impose a fine of up to 10 % of a company's annual worldwide turnover.

For more information, you may consult MEMO/12/1021.

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